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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,067	06/25/2003	Yoshiyuki Ando	YA05	1066
27797	7590	01/11/2006	EXAMINER	
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/604,067	Applicant(s) ANDO, YOSHIYUKI	
	Examiner Harry A. Grosso	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 3-7, 10, 11, 14, 15 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 8, 9, 12, 13, 16-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election of species 5, Figure 6, claims 1, 2, 8, 9, 12, 13, 16-18 and 20, in the reply filed on October 19, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 3-7, 10, 11, 14, and 19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

The examiner has withdrawn claim 15 because it is dependent on withdrawn claim 14.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 8, 9, 12, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Borin (3,858,767).
5. Borin discloses a plastic container (column 1, line 39) with a lip (20, Figures 1-5) and vertical projections (36) with a horizontal upper surface that would prevent the lip from contacting a surface on which the container is inverted. There are two projections separated by the lip and a slot (70). The cross-section of the container is a circle.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borin. Borin discloses the invention except for the height of the projection. Applicant requires a height of about 1 to about 3 mm above the lip but does not disclose that these dimensions are for any particular purpose or solve any stated problem. The container of Borin would be inherently capable of performing in the same manner as the container of claim 1. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a projection with a height of about 1 to about 3 mm in the container disclosed by Borin to provide it with adequate height to prevent the lip from contacting the surface. In *Gardner v. TEC Systems, Inc.*, 725 F. 2d 1338, 220 USPQ 777 (fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of the relative dimensions of a claimed device and a device having claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

8. Claims 2 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borin in view of Florian (4,049,187).

9. Regarding claim 2, Borin discloses the invention of claim 2 except for a handle. Florian discloses a plastic cup with a handle (Figures 1-6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a handle as disclosed by Florian in the cup disclosed by Borin to provide for a better way to hold the cup.

10. Regarding claim 18, Borin discloses the invention except for the handle and the height of the projection. Florian disclosed the use of the handle as discussed in paragraph 9 and the height of the projections is addressed in paragraph 7 above.

11. Claim 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Borin. Borin discloses a container that can be considered a drinking glass with a circular cross section, a sealed base, an open top, a lip and projections as discussed above. Borin does not teach the height of the projections. Applicant requires a height of about 1 to about 3 mm above the lip but does not disclose that these dimensions are for any particular purpose or solve any stated problem. The container of Borin would be inherently capable of performing in the same manner as the container of claim 1. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a projection with a height of about 1 to about 3 mm in the container disclosed by Borin to provide it with adequate height to prevent the lip from contacting the surface. In *Gardner v. TEC Systems, Inc.*, 725 F. 2d 1338, 220 USPQ 777 (fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of the relative dimensions of a claimed device and a device having

claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan Newhouse
Supervisory Patent Examiner
Art Unit 3727

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